**Article - Estates and Trusts**

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§15–403.

(a) (1) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established.

(2) Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor–restricted assets until appropriated for expenditure by the institution.

(3) In making a determination to appropriate for expenditure or accumulate under paragraph (1) of this subsection, the institution shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision, and shall consider, if relevant, the following factors:

(i) The duration and preservation of the endowment fund;

(ii) The purposes of the institution and the endowment fund;

(iii) General economic conditions;

(iv) The possible effect of inflation or deflation;

(v) The expected total return from income and the appreciation of investments;

(vi) Other resources of the institution; and

(vii) The investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only “income”, “interest”, “dividends”, or “rents, issues, or profits”, or “to preserve the principal intact”, or words of similar import:

(1) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section.

(d) (1) In this subsection, fair market value shall be calculated:

(i) If an endowment fund has existed at least 3 years, on the basis of the market value determined at least quarterly and averaged over a period of not less than 3 years immediately preceding the year in which the appropriation for expenditure is made; or

(ii) If an endowment fund has existed for fewer than 3 years, for the period the endowment fund has existed.

(2) The appropriation for expenditure in any year of an amount greater than 7 percent of the fair market value of an endowment fund creates a rebuttable presumption of imprudence.

(3) The institution shall notify the Attorney General of the appropriation for expenditure in any year of an amount greater than 7 percent of the fair market value of an endowment fund.

(4) This subsection does not:

(i) Apply to an appropriation for expenditure permitted under law other than this subtitle or by the gift instrument; or

(ii) Create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to 7 percent of the fair market value of the endowment fund.

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